

FILED

SEP 20 2013

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION

TONYA E. SUMMERS,
Plaintiff

Case No.: 5:13cv 667

COMPLAINT

vs.

FIRST FINANCIAL ASSET MANAGEMENT, INC ,

DEFENDANT

PRELIMINARY STATEMENT

1. This is an action brought from defendant's repeated violations of the Telephone Consumer Protection Act, (herein after, TCPA) 47 U.S.C. § 227, the Fair Debt Collection Practices Act, (herein after, FDCPA) 15 U.S.C §1692 and the North Carolina Debt Collection Act, General Statute §58-70 et seq. in its attempts to collect an alleged consumer debt.

JURISDICTION AND VENUE

2. Supplemental Jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper before this court pursuant to 28 U.S.C. 1391b in that the occurrences which give rise to this action occurred in Wake

1 County, North Carolina and the Plaintiff resides in Wake County, North
2 Carolina.

3
4 PARTIES

5 4. The Plaintiff, Tonya E. Summers ("Plaintiff"), is an adult individual
6 Who resides in Cary, North Carolina, and is a "consumer" as defined by 15
7 U.S.C. §1692a(3).

8 5. Defendant FIRST FINANCIAL ASSET MANAGEMENT, INC is a Georgia based
9 business entity with an address of 230 Peachtree St, 17th Floor
10 Atlanta, GA 30303, operating as a collection agency and is a "debt
11 collector" as defined by 15 U.S.C. §1692a (6).
12

13 ALLEGATIONS APPLICABLE TO ALL COUNTS

14 6. The Plaintiff allegedly incurred a financial obligation (the "Debt") to
15 an original creditor (the "Creditor").
16

17 7. The debt arose from services provided by the Creditor which
18 were primarily for family, personal or household purposes and
19 which meets the definition of a debt under 15U.S.C. §1692a(5).
20

21 8. The debt was purchased, assigned or transferred to FIRST
22 FINANCIAL ASSET MANAGEMENT, INC for collection.
23

24
25 9. The defendant attempted to collect the debt and, as such, engaged in
26 communications as defined in 15 U.S.C. § 1692a (2).
27

28 10. From 01/25/2013 to 06/07/2013, the Plaintiff received seven

1 (7) calls via automated dialer and/or prerecorded message to
2 her cell phone without having given prior express consent to
3 the defendant.

4
5 11. Of the calls received, four (4) of the calls contained voice
6 Messages that failed to identify the defendant as a debt collector
7 and the nature of the call.

8
9 12. The Plaintiff and the Defendant do not have an established business
10 Relationship.

11
12 COUNT-I

13 VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15
14 U.S.C.1692.
15

16 13. Paragraphs 1 through 12 are re-alleged as though fully set forth herein.

17 14. The Plaintiff is a consumer within the meaning of the FDCPA 15 U.S.C.

18 §1692a (3).

19
20 15. Defendant is a debt collector as defined in 15 U.S.C. § 1692a (6).

21 16. Defendant called the Plaintiffs cell phone without disclosing their
22
23 identity, which is in violation of 15 U.S.C. § 1692d (6).

24
25 17. By not identifying themselves & the nature of the calls, the defendants
26 conduct violated 15 U.S.C. § 1692e (10), by using of any false
27 representation or deceptive means to collect or attempt to collect
28 any debt or to obtain information concerning a consumer.

1 18. Defendants conduct violated 15 U.S.C § 1692e (11), by failing to
2 disclose that they are a debt collector and that the debt collector is
3 attempting to collect a debt and that any information obtained will be
4 used for that purpose, and by failing to disclose in subsequent
5 communications that the communication is from a debt collector.
6

7
8 COUNT-II

9 VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT.
10 47. U.S.C §227.

11 19. Defendants conduct violated 47 U.S.C. §227(b)(1)(A) by calling the
12 Plaintiff's number, which is assigned to a cellular telephone service.
13 The Plaintiff has never given First Financial Asset Management, Inc.,
14 permission to call Plaintiffs cell phone. Plaintiff is entitled to
15 statutory damages.
16

17 20. Defendants conduct violated 47 U.S.C. §227(b)(1)(A)(iii) by using an
18 automatic telephone dialing system to call the Plaintiff's
19 number, which is assigned to a cellular telephone service.
20

21 21. Plaintiff and Defendant, do not have an established business
22 relationship within the meaning of 47 U.S.C. §227.
23

24 COUNT- III

25 VIOLATIONS OF THE NORTH CAROLINA FAIR DEBT COLLECTION
26 PRACTICES ACT- N.C General Statute § 58-70.

27 22. Plaintiff is a consumer within the meaning of §58-70-90(2).

28 23. Defendant is a collection agency within the meaning of §58-70-15.

24. Defendants conduct violated § 58-70-110(2), by failing to disclose that they are a debt collector and that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and by failing to disclose in subsequent communications that the communication is from a debt collector.

VERIFICATION OF COMPLAINT AND CERTIFICATION

WHEREFORE, the Plaintiff requests that judgment be entered against Defendants

(1) Statutory damages per cause of action pursuant to 15

U.S.C. §1692k (a) (2) (A), against the Defendants;

(2) Costs of litigation and reasonable attorney's fees pursuant to 15

U.S.C. §1692k(a) (3) against Defendants.

(3) Statutory damages per violation of the North Carolina Debt Collection

Statutes pursuant to N.C. General Statute §58-70-130(b)

(4). that the court declares Plaintiff is not indebted to Defendants;

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated this 20th day of September, 2013

TONYA E. SUMMERS
507 WATERFORD LAKE DR
CARY NC 27519

